ANIMADVERSIONS

Upon the Modern Explanation of

11 HEN. 7. Cap. 1.

OR, A

KING *de FACTO.*

UNIVERSITY LIBRARY CAMBRIDGE

THough our Gentlemen of the *Revolution* seem well satisfied with their new Allegiance, yet the Reasons (if not the Degrees) of their Compliance are very different. 'Tis true, there are some few furnished with that variety of Demonstration as to be able to make out the Justice of the late Proceedings from no less than Four infallible Topicks, *Abdication, Forfeiture, &c.* but Men of this Compass of Thought are not commonly met with. The more moderate Undertakers are content to maintain a single Post, and think themselves well if the Cause will afford them one good Reason for what they do. Now in this their Vindication they are no less divided from themselves than from their Neighbours of the old Government. Some Men affirm, That the Crown was lapsed to the People, and that their Representatives have given it to the Prince of *Orange*, by way of Gratitude. Others thinking their Consciences not safe in this Bottom, tell us, That they are either Conquered or Undone; and seem Uneasy, because they don't argue in Chains. In earnest, our Circumstances must needs be hard, when our best Friends, who were so nicely Apprehensive of the least Incroachment, desert us at this surprising Rate. Who would have thought that these *Keepers of the Liberties of* England, who declaim'd so heartily against *Arbitrary Power*, and gave God solemn Thanks for their Deliverance, should reverse their Devotions thus soon, plead against *Magna Charta*, and set all their Wits on work to make us as great Slaves as those in *Turkey*? For that this glorious Condition is the Consequence of Conquest, is a Truth so obvious to collect, that a very little Reasoning will make it undeniable. And as if Disputing and Printing against the freedom of their Country were not enough; to make all sure, they are pleased to ratify their Slavery with an Oath. That they do no less is apparent; for those that Swear to the new Establishment, upon the Principle of Conquest, Swear that the Laws of the *Old Constitution* are no longer in force. And that the present Possessors may turn them out of their Freeholds, and sell them to the *West Indies* without any Legal Injustice. For when a People are Conquered their Lives and Fortunes lye at the Mercy of the Conquerour. This Title makes his Sovereignty absolute, and his Will a Law. But I shall take leave of these Submissive Gentlemen, and proceed to consider the Arguments for a King *de Facto*.

Now it is asserted by some of the Long Robe, That Possession of the Throne, abstracted from any other Title, is sufficient to challenge a full Obedience from the Subject; and that the Right of a Lawful Prince expires upon his Dispossession: This Opinion is founded upon Sir *Ed. Coke's* Authority, who in his Institutes Part 3. Ch. High Treason, maintains, That the Word *Roi*, mentioned 25 *Ed.* 3. *is to be understood of a King in Possession (though unjustly)* of the Crown

and Kingdom. The Grounds of this Concluſion are taken from 11 *H*7. c. 1. Now ſuppoſing this Act did reſolve all Right into Force, and was as Extraordinary as ſome People would make it, yet it could ſecure no more than the Dominion of *England* to the preſent Poſſeſſors. For Firſt, It cannot reach *Scotland* becauſe it is an independent Kingdom; and it has lately declared in Parliament (when Duke *Lauderdale* was High Commiſſioner) that the Proſperity of that Nation has been chiefly owing, next under God, to the abſolute Power, and uninterrupted Succeſſion of their Kings. So that it is plain, a King *de Facto* has nothing to do there; neither has he any better Colour of pretence to the Government of *Ireland*. Firſt, For the Reaſon above-mentioned, *viz.* becauſe *Ireland* is a ſeparate and diſtinct Dominion from *England*, as Sir *Ed. Coke* undeniably proves, *Calvin's* Caſe, p.22,23. Secondly, If it be Objected, That the Iriſh obliged themſelves by *Poyning's* Act to be governed by the Laws of *England*. To this I anſwer, That the Iriſh bound themſelves only to receive thoſe Laws which were then made, not ſuch as ſhould be made, for the future; and therefore that Kingdom is unconcerned with 11 *H*.7. in regard it was Enacted a Year after the Statute of *Poynings*. Beſides in that Iſland, the King *de Jure*, and *de Facto*, is the ſame perſon. To return therefore to *England*, I obſerve Firſt, That Sir *Ed. Coke*, in his Notion of the Prerogatives of a King *de Facto*, contradicts himſelf: For, in *Calvin's* Caſe, he tell us, That *Allegiance and Faith are due to a King by the Law of Nature*. He muſt mean a Rightful King; for the Law of Nature doth not incourage Injuſtice and Uſurpation. Secondly, He affirms, That *the Law of Nature is part of the Law of* England, and cites *Bracton*, *Forteſcue*, &c. for this Point. And Thirdly, That *the Law of Nature is immutable*, *Calvin's* Caſe, p.12. From hence I infer, That if Allegiance is due to a Rightful King, by the Law of Nature; if this Law is incorporated into our Engliſh Conſtitution, and of an immutable Obligation, then it neceſſarily follows, That as long as we have a King *de Jure*, we muſt be *de Jure* his Subjects: So that by Sir *Ed. Coke's* Argument, It muſt be unlawful to aſſign over our Obedience to a Prince *de Facto*, who hath nothing but meer Power to prove his Authority. Farther he tells us, That *Rex de Facto & non de Jure, il Seignieur le Roi, within the Purvieu of the Statutes*, ſc. 25 *Ed.* 3. which he pretends to prove from 11 *H.*7. c. 1. which being the Firſt Authority he cites in confirmation of his Opinion, he owns by Conſequence, That before the making this Statute, a King *de Facto* was not within the Purvieu of 25 *Ed.* 3. And therefore, upon his own Grounds, *the King for the time being*, mentioned 11 *H.*7. c. 1. muſt be a King *de Jure*, at leaſt one that was preſumed ſuch; becauſe at that time the Conſtitution knew no other: For that Poſſeſſion was not a ſufficient Title before 11 *H.*7. will evidently appear from theſe following Remarks.

Firſt, Becauſe we don't find ſo much as the Name of a King *de Facto* in our Statutes till 1 *Ed.* 4. c. 1. where all the Lancaſtrian Line are declared Kings, *de Facto, but not de Jure*; *in Deed, but not in Right*; pretenſed (or pretended) Kings. 1 *Ed.* 4. c. 1.

Secondly, *Henry* the Sixth is ſaid to be *rightfully amoved* from the Government: And his Reign affirmed to be *Intruſion* and *Uſurpation*; and himſelf attainted for being in Arms againſt *Edward* the Fourth. *Cotton's* Abridg. fol. 670, 671. *Baggot's* Caſe, 9 *Ed.* 4.

Thirdly, All Patents of Honour, Charters and Priviledges, which were granted by the Houſe of *Lancaſter*; all Acts of Royal Authority, which the Kings of *England* have a Right to execute by vertue of their ſole Prerogative; (nay Acts of Parliament themſelves, particularly thoſe relating to *Shrewsbury*, and ſome others, which by parity of Reaſon ſuppoſes the reſt in the ſame Condition;) all Acts of this Nature were confirmed by the firſt of *Edw.* the Fourth, which is a good Argument that this Parliament believed the Authority by which they were performed to be

Defective

Defective and Illegal: For we never find any ſuch general Confirmations as theſe paſs upon the Grants of Kings *de Jure*.

Fourthly, In the Firſt Year of *Hen.* 7. *Ric.* 3. was attainted of High Treaſon in Parliament, under the Name of Duke of *Gloceſter*; (Lord *Bacon*, *vit. H.* 7. p. 1004.) from whence its plain, That as there was no Statute, ſo neither was there any Common Law to ſupport the Title of a King *de Facto*; for Treaſon is an Attempt againſt the King's Perſon, his Crown and Dignity, but no Man can commit Treaſon againſt himſelf: Therefore if *Ric.* 3. had been a King in the Senſe of the Law, we may be ſure he would not have had ſuch an infamous Cenſure paſt upon him after his Death. *Bradſhaw*, and his High Court of Juſtice, were the Firſt that were ſo hardy as to pronounce a King of *England* guilty of Treaſon.

Fifthly, if this Notion of a King *de Facto* had been allowed in the 1 *H.* 7. the Principal Aſſiſtants of *Ric.* 3. would not have been attainted, (Lord *Bacon ibid.*) for *Richard* being actually in the Seat of the Government, he was, according to our modern way of arguing, Rightful King; and conſequently the People ought to own him as ſuch, and defend him againſt all Oppoſers: And if ſo, certainly they ought not to be condemned as Traytors for doing their Duty, as we find many of thoſe were who fought for King *Richard*.

Sixthly, At the end of this Parliament *Hen.* 7. granted a General Pardon to the common People, who had appeared againſt him in the behalf of *Ric.* 3. Now Pardon ſuppoſes a Fault, and the Breach of a Law; which they could not have been charged with, if the Plea of a King *de Facto* had been warranted by the Conſtitution.

The Conſideration of theſe Things is ſufficient to confute that new Notion, which is advanced in a late Book (*The unreaſonableneſs of a Separation*, &c. p. 30.) *viz.* That *a King de Facto is in the Senſe of our Law no Uſurper*. The Inſtances of proof are made in the Three ſucceſſive *Henrys*. Thus this Author: But we ſee unrepealed and unexceptionable Acts of Parliament ſay the contrary. For, not to ſum up the whole Evidence, are not theſe Lancaſtrian Princes called *pretended Kings*, Kings in Deed but *not in Right*? Now what are *pretended Kings*, who have *no Right*, but are *rightfully removed from the Government*, what are ſuch Kings but Uſurpers? If the detaining and exerciſing that Power or Property, which by evident Declarations of Law belongs to another, be not Uſurpation; then no Man can be an Uſurper, but all Titles are alike, and there is no ſuch thing as Right and Wrong. But poſſibly this Author thinks the Crown to be *Feræ Naturæ*, and that its every Ones that can catch it. If ſo, the Parliament 1 *Ed* 4. was not of his Opinion. For they condemn the Proceedings of *Henry* Earl of *Darby* (as they call *Hen.* 4.) in very ſharp Expreſſions; they affirm the Reign of *Hen.* 6. to be *Intruſion* and *Uſurpation*.

They are very poſitive, That he who is an Intruder at Firſt, muſt (provided the Right Owners are known) be an Uſurper ever after; and that the Continuation of an Injury cannot alter the Nature of it, except it be to heighten the Crime. Indeed it would go hard with honeſt Men if Dominion might be acquired by Injuſtice, and Right depended upon Wrong.

This Parliament, Rot. Parl. 1 *E.* 4. n. 9 10. &c. and that of 1 *Jac.* 1. (though poſſibly this Author may not think it material) fix the Crown upon the Point of *Proximity* and declare, That *Ed.* 4. and *Jac.* 1. are rightful Kings of *England* by virtue of their *Lineal Deſcent, by the Laws of God, of Nature, and thoſe of the Land; and that they will repute them, and their Heirs, for true Kings of* England, *and no other, in virtue of their ſaid Right and Title, and ſpend the laſt drop of their Blood in defence of it.* This one would imagine is *ſticking upon the point of Proximity* to purpoſe: And yet our Author is pleaſed to ſay, That a King of *England* may *challenge Obedience though he does not claim by an immediate Hereditary Right*, pag. 30.

Now he that has Allegiance due to him muſt have the Prerogatives of Sovereignty

vereignty : For the Word *Allegiance*, applied to Kings, imports thus much in the Sense of our Laws, 11 *H.* 7. &c. So that by Consequence he may be King to all Intents and Purposes without an *immediate Hereditary Right*, *i. e.* without any Hereditary Right at all : For Hereditary Right is nothing but a Lineal Succession to the last Lawful Possessor, and therefore it must be immediate in the very Notion of it. For where the next in Blood may be Lawfully pretermitted, the whole Family may be served so too; and consequently can lay no claim to an Hereditary Right. But as *far as our* Author *can see*, our *Laws require Allegiance* to be paid to a King, without such *Hereditary Right*. I am sorry he could not see these Acts of Parliament, nor the Oaths of Allegiance and Supremacy; for then possibly he would have been of another Opinion. There is an excellent Book, called *The Grand Question*, which, had it lain in this Gentleman's way, I believe the Authority and Reason of it would have inlightned him upon this Point : For that Great Author proves, That an Act made 1 *Ed.* 3. was not barely *Repealed, but declared in Parliament to be Unlawful; because* Ed. 2. *was then Living, and true King*. Rot. Parl. 64. 21 Rich. 2. Grand Quest. p. 80, 81.

Secondly, He takes it for granted between himself and his Adversary, That Hen. 4. *was an Usurper, and consequently that the Repeal of* 21 Rich. 2. *was not Legally made; especially considering* Rich. 2. *was then Living*, Id. p. 83.

Thirdly, He avers, That Ed. 3. *was an Usurper as long as his Father was Living, and the Proceedings of the Parliament under him, during that time, null and void*. p. 85, 86.

And yet it must be granted, That *Ed.* 3. had several Advantages which some Kings *de Facto* cannot pretend to. For 1. He was Heir apparent to *Ed.* 2. 2. His Father had resigned the Crown, though by constraint. 3. The Parliament which adhered to him was summoned in *Edw.* 2. Name. 4. There was no Oaths of Allegiance and Supremacy enjoyned the Members of both Houses, under the Penalty of nulling every Thing they did, by omitting to Swear; as there are since by expres's Statutes. 7 *Jac.* 1. 30 *Car.* 2.

Farther I desire to know of our Author, Whether the English of a King *de Jure* is not one to whom the Government belongs, according to the Constitution? He grants thus much, and affirms, That he who succeeds by proximity of Blood is such a King *de Jure*. Now if a Prince who claims by Descent comes in by the Constitution, then he who founds himself upon the Peoples Consent (the Author's King *de Facto*) must cross upon the same Constitution, and consequently be an Unlawful King. For if the Laws tye the Crown to Succession, as they evidently do; then a Title drawn from the Peoples Consent is against Law : Unless a Kingdom can be Elective and Hereditary at the same time; *i. e.* unless the People may have a Liberty, and no Liberty, to chuse their King. Now if a King *de Facto* be neither *de Jure* nor a Usurper, neither a Lawful nor (as our Author affirms) an Unlawful King, then certainly he is no King at all. For to aver, That there is a Medium between these Two, is to say, That a Man may have a Title which is neither Right nor Wrong : And then sure *Aristotle* is much to blame for exposing those Philosophers who asserted, A Thing might be, and not be, at the same time. For the one is not a greater contradiction in Nature than the other is in Morality.

Farther, this 11 *H.* 7. though never so loosely Interpreted, can do no Service to the present Settlement; because it's vertually repealed by 1 *Eliz.* by which we are obliged to Swear to be true to the King, *His Heirs and Lawful Successors, i. e.* those who have a Right to the Crown by Proximity of Blood.

From whence I argue, First, That if we are Sworn by Act of Parliament to pay Allegiance to the Heirs of a King *de Jure*, who never were in Possession, then a *Fortiori* to a King *de Jure*; who besides the Legality of his Title, has been actually recognized as Sovereign, and enjoy'd an uncontested Administration of the Regal Power.

Secondly,

Secondly, If our Laws oblige us to Swear ſubjection to the Heirs, &c. of a Rightful Prince, then by undeniable Conſequence we are bound not to tranſlate our Allegiance to thoſe who are unjuſtly ſet up by the People. For without all Queſtion the Words *Heirs* and *Lawful Succeſſors* were made uſe of on purpoſe to ſecure the Hereditary Rights of the Monarchy, and to prevent all Uſurpations upon the direct Line. And ſince by virtue of the Statute which framed the Oath of Supremacy, we are not to acknowledge any pretended Governors to the Prejudice or Diſinherſion of the Heirs of the King *de Jure*, then moſt certainly we ought not to do this in Oppoſition to the King *de Jure* himſelf. So that now we have no Pretence to make Right the conſequence of Poſſeſſion in the Crown, any more than in other private Caſes.

But ſuppoſing this Statute of *H.* 7. was in full force, it cannot be applied to the preſent Caſe. Firſt, Becauſe the Title to the Crown was then ſomewhat doubtful and intangled, at leaſt, in the opinion of the People: For notwithſtanding the Right lay in the Houſe of *York*, yet that of *Lancaſter* had poſſeſſed the Throne for Three Decents ſucceſſively, and pretended that *Edmund Crouchback*, under whom they claimed, was elder Brother to *Ed.* 1. The Caſe therefore being thus diſputable and perplex'd with reſpect to the Multitude; this Act (as my Lord *Bacon* obſerves) was made to indemnify the Subject, who out of a principle of Integrity had ſerv'd the Crown; it being thought unreaſonable that the common People ſhould ſuffer for their Loyalty.

They had not an Opportunity of examining Pedigrees, and ſearching Records, and therefore it would have been hard, if they had been obliged to forfeit their Lives and their Eſtates, only for their being ſo unfortunate as to pay a well meant Allegiance to a wrong Perſon: And ſince at that time they were not ſo well qualified to find out the Right of their Prince, it was thought ſufficient for them to follow the Solemnities of Pomp and Power, and to be exempt from Puniſhment, provided they adher'd to him, who was in preſent Poſſeſſion: But to apply this Statute to a Caſe where the Title is clear and uncontеſted, is a very Illogical and Dangerous way of Arguing, and has as little Warrant from the reaſon of the Act, as from Equity it ſelf. It appears ſufficiently from the Hiſtory of thoſe Times, that this Act was only intended for the ſecurity of *H.* 7. who had a very lame Title, and therefore being made upon a particular and ſingular occaſion, it ought not to be extended farther to the prejudice of Equity and Common-Law, nor be interpreted in ſuch an extravagant Sence, as encourages Treaſon and Ambition to ſcramble for the Crown as often as they have any proſpect of Succeeding in their Wickedneſs. But,

Secondly, To put the matter out of all doubt, I ſhall prove from the very Words of the Act, that it was no more then a Temporary Law, and expir'd with the Life of the Prince who made it. The Statute begins thus, *The King our Sovereign Lord calling to remembrance the Duty of Allegiance of his Subjects of this Realm.* Afterwards the Enacting part follows, *ſc. Thoſe who attend upon the King for the time being, and do him true and lawful Service of Allegiance,* &c. *ſhall be ſecur'd from all manner of Forfeitures and Moleſtations relating to their Perſons or Eſtates, provided always that no Perſon or Perſons, ſhall take any benefit or advantage by this Act, which ſhall hereafter decline from his or their ſaid Allegiance.* Now we know a Proviſo is an Exception or Reſtraint upon the Latitude, and Comprehenſiveneſs of the Law, and that all Statutes are perfectly Null ſo far as the Proviſo reaches. Having premiſed this, I ſhall endeavour to prove that this Act was deſigned only for the ſecurity of that Reign in which it was made, and cannot be ſtretch'd any farther. To make this appear, Let us ſuppoſe a Competition between a Prince *de Jure*, and *H.* 7. *i. e.* another *de Facto*, and that the Subject in-

gages

gages for the latter. In this Case if the King *de Facto* prevails, there is no need of the assistance of this Statute; for we cannot imagine any Prince could be so Impolitick as to punish those who have ventur'd their *All* to maintain him in his Government. This, besides the ingratitude of the Action, proclaims the Injustice of his Cause, and is the way to ruin his Interest. If it be Objected, That if it had not been for the Indemnity of this Statute, he would have been oblig'd to have punish'd them for opposing their lawful Prince. To this I Answer, First, Do Kings *de Facto* always perform that which the Laws require? If so, they would never have been Kings *de Facto*; since they could not make themselves Masters of the Sovereign Power, without dispossessing those who are supposed the right Owners of it. Secondly, The Possessour would not so much as seem obliged to punish his Adherents upon a Competition, except he own'd himself to be no more then a King *de Facto*, that is, unless he acknowledg'd the Acquisitions of his Victory Unjust, and himself an Usurper; but we have neither Example nor Reason, to expect such singular Confessions as these; For no Usurper will own himself in the Wrong so long as he intends to enjoy the Advantages of his Injustice: Upon supposition therefore that the Victory had fallen on the side of a King *de Facto*, the Act would be wholly superfluous.

But Secondly, If the King *de Jure* had prevailed, the matter is not mended; For now, though those that stood by the King *de Facto* will have great occasions for an Indemnity, yet this Act will be as helpless to them now, as it was needless before: For either they must submit to the King *de Jure* or not; if they do not submit, it's easie to imagine the consequences, how a Victorious and Irresistable Prince will treat the Obstinate and Rebellious Opposers of his Just Title; if they do submit, as of necessity they must, then they can claim no manner of Priviledge and Indemnity from this Act, for they cannot come into the side *de Jure* without deserting that *de Facto*, *i.e.* without declining their Allegiance to him, who was King when this Statute was made. By *declining which Allegiance*, the Proviso expresly excludes them from all manner of *Benefit or Advantage by this Act*. In this condition the Law would have left the *de Facto* Party. If the Sovereignty had been disputed between *H.* 7. and the House of *York*, and the Prince *de Jure*, or House of *York* had been Successful: From whence it's undeniably plain, that neither the Design nor Words of this Statute can be drawn to such a monstrous Construction, as to Enact bare Possession a good Title, and make Might and Right the same thing. The only design of this Parliament was to continue the Crown to *H.*7. during his Life; which both by the Body and Proviso of the Act, was as effectually done as in them lay. Now the reasons that prevailed with the Two Houses to consent to a Temporary alteration of the Constitution with respect to the Crown, were probably these.

1. Because *H.*7. did not openly disavow his Reigning in his Wifes Right, who was Queen *de Jure*, for the Act of Parliament by which he was recognized King of *England*, was Interpretable in this Sence, (Lord *Bacon*, *ibid. p.* 1003.) and with this Construction there was no injury done to the Hereditary Right of the Crown.

2. *Elizabeth*, the Queen *de Jure*, by her subsequent Marriage and acquiescence, seem'd contented with this Settlement. So that her forbearing to claim, or in the least to insist upon her Right, was a tacit resignation of it to King *Henry*, which seem'd to make him not only *de Facto*, but during her Life *de Jure* too.

3. When this Parliament was called, *Perken Warbeck* had lately made a Descent upon *Kent*, and threatned the Kingdom with a more formidable Invasion (Lord *Bacon*, *p.* 1075, 1076.) Now though the Two Houses might see through the Imposture; yet it's plain many of the People did not. Nay some Persons of great Quality, who had better Opportunities for Enquiry, believed

Perken

Perkin to be the true *Plantagenet*, Son to *Ed* 4. The Parliament therefore, who knew him to be no more than a Counterfeit Prince, muſt conclude that the beſt way to ſecure the Succeſſion of the Crown, was to ſupport the Government of *H.* 7. which (conſidering the preſent Scruples and Uncertainties of Right) could not be more effectually done, than by Indemnifying all thoſe who ſhould afterwards appear for him.

4. We are to conſider that at this juncture *H.* 7. had ſeveral Children by his Queen, *viz. Arthur*, *Henry*, &c. So that now the contending Families of *York* and *Lancaſter*, being thus happily United, there was no reaſon to fear, That a Security, though an unuſual one, to the preſent Poſſeſſor, could be prejudicial to the right Line; eſpecially ſince the force of that Act was confined to the Reign of that Prince, as has been already prov'd.

5. That this Act was no more than Temporary may be made good from the Practice, as well as the Reaſon, of that Law; I ſhall cite the Duke of *Northumberland's* Caſe, who, when he was tryed for Treaſon for leading an Army againſt Q. *Mary*, deſired to be informed by the Judges, *Whether a Man acting by the Authority of the Great Seal, and the Order of the Privy Council*, (or *Prince's Council*, as *Stow* and *Heylin* word it) *could become thereby Guilty of Treaſon?* To which the Judges anſwered, *That the Great Seal of one that was not Lawful Queen could give no Authority, or Indemnity, to thoſe that acted by ſuch a Warrant.* Burnet's Hiſt. Reform. p. 2. p. 243. Upon which the Duke ſubmitted; though without Queſtion he did not want Lawyers to reinforce his Plea, if his Caſe would have born it. From whence

1. I infer, againſt Sir. *Edw. Coke*, That Treaſon lyes againſt a King *de Jure*, though out of Poſſeſſion: For its plain, by all our Hiſtorians, that Q. *Mary* was far from being poſſeſſed of the Crown, when the Duke of *Northumberland* acted againſt Her. So far was ſhe from being Regnant that, its pretty plain, ſhe had no great hopes of Succeeding. For when ſhe underſtood Q. *Jane* had taken the Government upon her, ſhe retired with only a few *Suffolk* Gentlemen to *Framingham* Caſtle, near the Sea, that ſhe might be ready to embarque for the Security of her Perſon. But I ſhall inſiſt upon this Corolary no farther though were it neceſſary it might be proved by other unqueſtionable Authorities.

2. I infer, That any Commiſſion or Authority granted by a King *de Facto*, againſt one *de Jure*, is null and inſignificant; though it has all other Advantages and Forms which the Law preſcribes. The only Objection againſt this Inference is, That the Lady *Jane* was not a Queen *de Facto*. But why not a Queen *de Facto*? Had ſhe not the Colour of K. *Edward's* Letters Patents, and the Concurrence of all the Judges ſave one, to ſupport her Claim? Did not a numerous Privy Council, ſeveral of which were Perſons of the firſt Quality, and higheſt Offices of the Kingdom, ſwear Allegiance to her? *Heylin's* Ref. p. 160. Was ſhe not proclaimed in *London*, and in moſt of the chief Cities, Towns and Places, of greateſt Concourſe? *Heyl. Ibid.* p. 237. *Burn.* p. 237. Were not the Tower of *London*, and the Land and Naval Forces, under her command? 'Tis true, ſome of them deſerted her ſoon after; but this proves they were with her before. Did ſhe not aſſume the Name and State of a Queen, and were not the Seals thoſe *Dead Springs of the Government* in her Cuſtody? I grant our Hiſtorians agree, That her Queenſhip laſted but Nine or Ten Days; but if ſhe had Reigned but ſo many Hours, it had been ſufficient to prove the Point in hand: For the Eſſence of a King *de Facto* conſiſts in Poſſeſſion, and extent of Power; not in the length of his Government. Beſides, when the Duke pleaded the Warrant of the Privy Council, and the Great Seal; the Judges anſwered, That his Authority was invalid, becauſe granted by one *who was not Lawful Queen*. Where we may obſerve, They don't deny her the Name of a Queen; but allow it by implication in their Anſwer. And ſince ſhe was a Queen, and not *de Jure*, ſhe muſt be one *de Facto*: For I have already proved, That our Laws take no Notice of any Third Chimerical Monarch, diſtinguiſhed from theſe Two. We ſee therefore, in the Opinion of the Judges, and Court in Q. *Marys* Reign, That the 11 *H.* 7. cannot indemnify the Subjects for bearing Arms againſt a Prince *de Jure*: For if it could have been ſerviceable to the Duke, its unimaginable to ſuppoſe his Counſel ſhould forget ſuch a remarkable Defence.

But

But to bring the Diſpute nearer Home, and to make the Caſe more plain, if poſſible. Let us ſuppoſe 11 *H.*7. ſtill in Force; and upon this ſuppoſition I argue, That this Act muſt neceſſarily give the ſame Advantages to the Lawful Succeſſors of *H.*7. which it gave to himſelf: For if Allegiance is due to a King *de Facto*, then certainly it is equally due to him, who is King both *de Facto* and *de Jure*. Therefore thoſe who decline from their Allegiance to ſuch a Rightful Poſſeſſour (as they certainly do who depoſe him or ſwear Allegiance to another) are expreſly bar'd from receiving any *Benefit or Advantage by this Act*. So that now they muſt lye under the laſh of thoſe antecedent Laws, which puniſh all Diſloyal practices againſt a Rightful Prince, whether in or out of Poſſeſſion; and if they are puniſhable by a King *de Jure*, than undoubtedly they are his Subjects and conſequently not at Liberty to tranſlate their Allegiance to another.

If it is Objected, That the Penalty of this Proviſo affects the Subject no longer than the King is in Poſſeſſion. To this (beſides what has been ſaid already) I Anſwer, That this Conſtruction makes the ſence of the Act Inſignificant and Ridiculous. For then the meaning of the Law runs thus, *viz.* Thoſe who adhere to the King in Poſſeſſion ſhall be Indemnified, but thoſe who fight againſt him ſhall have none of this Favour; that is they ſhall be puniſhed. Be puniſhed by whom? Why by the King they Oppoſed, if he happens to ſit ſure and gets the better of them; otherwiſe it ſeems they are ſafe enough. Now this is profound Diſcourſe, and very ſuitable to the Wiſdom of a Parliament, to tell us, That Rebels when they are Routed and Subdued, may be Lawfully puniſhed. Had we not Statutes, Common Law, and Common Sence enough, to acquaint us with this before? What need this admirable Diſcovery have been thus carefully drawn up into a Proviſo, as if there had been ſomething in the body of the Act, which made it Unlawful for a Conquering Prince to chaſtiſe Rebellion? If it be farther replied, that this Proviſo was intended for a Reception. For though it does not tye the Subjects Allegiance to an ejected Prince, yet upon the recovery of his Crown, it gives him Authority to puniſh thoſe who dethroned him; and with this Interpretation the Law appears intelligible.

In Anſwer to this, I deſire to know which way a Prince diſpoſſeſſed can recover his Right, according to the modern Conſtruction of this Act? For if the whole Kingdom be bound to aſſiſt the King *de Facto* againſt the King *de Jure*, how is it poſſible for the latter to re-enter upon his Dominions? And ſince by the ſuppoſition, his Right to puniſh doth not commence till he has Power to execute; this Proviſo will have little Terror in it, and prove a very ſlender Preſervative againſt Treaſon. And beſides, if it ever happens to come into play, 'twill be perfectly uſeleſs; for this Expedient cannot take place unleſs the King *de Jure* makes his way back to the Throne by Conqueſt, and Foreign Force. And if he returns with this Advantage, there are old Laws enough to puniſh Traytors, (25 *Ed.*3. *&c.*) which we may imagine he would venture to make uſe of, whether this Clauſe had given him ſuch a Liberty or not.

In ſhort, This Act, as it is now the Faſhion to underſtand it, is ſuch a monſtrous and unaccountable piece of Legiſlation, as I believe the moſt Barbarous and Unpoliſhed Nation was never guilty of. For it leaves the Kingdom Hereditary, and yet obliges the Subject to obey the Poſſeſſor, though never ſo obſcure and remote from the Royal Line. It reſolves all Title into Force and Succeſs, and puts no difference between a good Cauſe and a bad one. It ſets the beſt Princes aſide only for being Unfortunate; encourages the Ambition of Enterprizing, and unreaſonable Men; and gives the Rights of Sovereignty to thoſe who have done the greateſt Wrong. It overthrows the moſt Sacred and Eſtabliſhed Maxims of Juſtice; repeals, in effect, almoſt half the Commandments; and makes the Devil, if he ſhould prevail, the Lord's Anointed. Beſides, its not only Unnatural and Unrighteous in the Body, but Uſeleſs and Impertinent in the Proviſo. In earneſt, I am afraid thoſe Lawyers who debauch Mens Underſtandings with ſuch ſingular Abſurdities as theſe, will have a great deal to anſwer for. God grant they may conſider before its too late.

FINIS.